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COVID-19, State Intervention, and Confucian Paternalism

Ellen Y. Zhang

Department of Philosophy and Religious Studies, University of Macau, E21-4101, Avenida da Universidade, Taipa, Macau, China; eyzhang@um.edu.mo

Abstract: For many in the West, paternalism manifest as state interference carries a pejorative connotation, as it is often taken to entail unjustified restrictions on autonomy and self-determination and frequently believed to precipitate bureaucracy, corruption, and inefficiency. Meanwhile, uncritical deference to policies in which individual liberties remain essentially unchecked by state oversight has faced renewed scrutiny since the outbreak of the COVID-19 pandemic, as many across the globe are now coming to believe that we must accept greater governmental intervention in our lives, particularly during times of widespread health crises. This paper explores normative considerations justifying state intervention with respect to public health policies in response to the COVID-19 pandemic through the lens of Confucian paternalism, which is distinguished from a more general concept of paternalism widely used in contemporary philosophical discourse. It argues that the "soft" paternalism apropos to Confucianism has pragmatic benefits for the development of healthcare policies due to which it is not only morally warranted but even preferable to alternatives in terms of safeguarding population health.

Keywords: paternalism; libertarianism; intervention; Confucianism; autonomy; public health; COVID-19

1. Introduction: Libertarianism and Paternalism

Beginning in early 2020, in response to the COVID-19 pandemic, a notable wave of top-down governmentally overseen public health policies were introduced and implemented across the globe. For many in the West, especially those sympathetic to a libertarian worldview, such intervention implied an assertion of state control unduly regulating the private lives of citizens. Although this legislation was proposed on the basis of specific health and welfare calculations, it was considered to be problematic because of the degree to which new regulations were perceived to impinge on individual liberties hitherto considered sacrosanct and untouchable. Such libertarian counterarguments were based on the principle of autonomy and respect for persons, on justifications grounded in civil rights, and through well-known appeals to legislative restraint on government interference. Meanwhile, concerns about bureaucratic overreach, the corruption of political and cultural elites, and inefficiencies of state-sponsored policy initiatives lent extra support to the critical response to perceived incursions into basic freedoms.

Though written in England and more than twenty centuries removed from Confucius, John Stuart Mill's *On Liberty* reflects the sociopolitical transition from a traditional culture to modernity. Here we find the classic statement of the liberal position where "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant" (Mill 1974, p. 68). For Mill, despite the fact that governments can seek to justify their interference on an exceptional basis by asserting that they act for individual citizens' own good, paternalistic policies are problematic because they amount to an infringement of a presumptive individual liberty.

Since Mill, philosophers and political theorists in diverse cultural settings have accepted the premise that we should respect the decisions of individual agents when those de-

cisions affect no one other than themselves. In the US, the unpopularity of paternalism is often associated with pejorative expressions such as the "nanny state." Even those who take issue with the libertarian position acknowledge the rhetorical challenge inherently posed by these utterances, which, when not heeded as the linguistic obstacles they are intended to be, can impede the realization of important public health outcomes (Carter et al. 2015, pp. 1021–29). This poses a conundrum for the one in favor of intervention during times of a public health crisis: how can we manage to overcome a libertarianism that does not prioritize the good of the population without needlessly invoking a culture war in which basic freedoms are announced to be under attack?

Complicating matters, proponents of libertarianism often announce that they are champions of "individual autonomy". The word autonomy derives from the Greek root "autos", or self, and "nomos", meaning rule or law. Those who argue against paternalism often use the concept of "autonomy" to indicate the idea of "self-governing" and "self-deciding" as the alternative to being "controlled" by external political authorities. In this respect, autonomy is construed as the power of individuals to act independently and resist coercion imposed by foreign externalities. It is a principle which leads to a normative view according to which the choices of autonomous agents should be protected from interference and intervention by institutions or government. Libertarians seek minimization of the state's encroachment on individual liberties as something to be prized for its own sake. For libertarians, freedom is an integral part of human rights. This is a view to which Robert Nozick, one of the most influential political philosophers defending a libertarian position, lent considerable heft when he likened individual freedom to what he termed "the right of self-ownership". In *Anarchy, State, and Utopia*, Nozick sees the principle of self-ownership as a first premise of a rights-based view of morality in which every person is morally entitled to full private property and expression in their own person and powers (Nozick 1974). To quote Nozick, "each person has an extensive set of moral rights ... over the use and fruits of his body and capacities" (Cohen and Graham 1990, p. 25).

Although self-ownership is identified with the right to private property (including the physical space occupied by one's body), it also indicates self-control and self-determination bereft of external coercion. Nozick's principle of self-ownership is the fundamental idea at the heart of all major versions of libertarian arguments based on freedom. It functions as a normative claim pointing to the relationship between oneself and one's action. To maximize autonomy and individual freedom, Nozick proposes the idea of a "night-watchman state" in response to the twin challenges of statism and anarchism (Nozick 1974). In this relatively minimalist conception, government should do what is necessary in order to prevent society from lapsing into a chaotic and uncivil polity. It should provide protection and security from both external and internal aggressions in order to maintain law and order and support critical public facilities, but it should not do much more.

In spite of its grounding in a durable and tested political tradition that predates even the Enlightenment, such a view has faced growing resistance since the outbreak of the pandemic, defense against which requires proactive and preventive planning. This paper explores normative consideration of the emerging case for paternalism through the lens of Confucian ethics, whose collectivist approach to crafting public policy has often been mistaken as a form of political totalitarianism in the West and elsewhere. I argue that there are dimensions in the Confucian politico-ethical position that are both unexplored and misunderstood, which, properly appreciated, can offer guidance in response to global health crises. I distinguish Confucian exemplary paternalism from the more standard concept of paternalism used in the contemporary philosophical discourse, focusing my analysis on the related concepts of character-based consequentialism, trust, and relational autonomy, suggesting, finally, that this "soft" notion of paternalism is not only morally justifiable, but also preferable for pursuing sound healthcare policies in times of exigent widespread health crises.

2. Defining Confucian Paternalism

"Paternalism" is a misused and arguably misunderstood concept. The English word "paternalism" comes from the Latin *pater*, meaning to act like a father, or to treat another person like a child. As the metaphorical language suggests, paternalism represents a parent/child relationship in which it is assumed that the child lacks the capacity to act in their best interest. The parent thus must use their presumably legitimate authority to guide the child in ways that help the child flourish. It follows that paternalistic practice involves spheres of provision and protection accompanied by restriction and control. From this much it is clear that paternalism has both general and specific meanings. At a general level, paternalism refers to government by a "benign parent" who makes decisions on behalf of those who may not be able to make good decisions for themselves (Blackburn 2008, p. 270). More specifically, paternalistic policies possess some distinct elements: (1) they involve interference in a person's opportunity or ability to choose; (2) they imply an enactment to further the person's perceived good or welfare; and (3) they are made without explicit consent of the person concerned (New 1999, p. 65).

In the modern West, especially since the Enlightenment and among secular thinkers, paternalistic political authority and governance is often rejected for a number of reasons that are not necessarily built into the strict definition of paternalism just considered, including that (1) it embraces a skeptical view of an individual's capacity to make good decisions on behalf of one's own welfare and wellbeing; (2) it is over-confident in the ability of government to make a better decision to advance that welfare and wellbeing; and (3) it holds that because of what government can do which individuals supposedly are incapable of doing, it should be given broad discretionary authority to enact policies that restrict free choice as a way to advance the welfare of the community, even when such policies run counter to the presumptive respect for autonomy and the related values of privacy and informed consent. In other words, while paternalism in all of its forms entails an authority acting on behalf of someone else, hopefully in that person's best interests, in the West and in most standard accounts the concept *also* came to imply a disparaging account of individuals, who are presumed at the outset not be able to act in their own best interests. Responding to moral arguments mustered by critics of this modified understanding, supporters of paternalistic policies affirm the legitimate authority of the state as one of the most basic and enduring types of traditional governance (Lau et al. 2019). In communitarian societies, such as those grounded in Confucian ideals and practices, "authority" is in any case not likely to be perceived as problematic because the idea of respect for authority is seldom challenged and a strong notion of individualism, as such, does not exist.

Confucius (551–479 BCE) is one of the most influential thinkers of Chinese philosophy and a representative voice of Chinese culture even up through the contemporary era. His ideas are regarded as foundational to a philosophical tradition that emphasizes respect for the elderly and the moral duties of rulers and subjects. Since the family is considered the smallest, but also the most essential, unit of state organization, and paternalistic leadership is inextricably linked to the familial model, Confucian ethics endorses a specific type of moral reasoning based on the values of familial caring and dutiful relationships. The term "paternalism," which has been increasingly used in Confucian scholarship in recent decades, makes sense when discussing classical Confucian politics and ethics given that in the Chinese tradition, government officials are literally called "parent–officials" (*fumu guan* 父母官) whose sovereignty is honored and respected. Those in positions of power have, as they do in the relationship between parents and children, the right and the obligation to act upon the best interests of those who need appropriate guidance in circumstances in which they are not otherwise capable of knowing their true interests. In Confucianism, paternalism is linked to the virtue of "filial piety" (*xiaojing* 孝敬), i.e., the attribute of respect for one's *parents*, elders, and government officials, an asset reflecting *de facto* hierarchical social relations. According to Ruiping Fan, filial respect is not simply owing to a person's maturity or rationality, but also due to one's relation to the ancestors (Fan 2010, p. 226). Thus,

the interdependence between parents and children is logically and seamlessly extended to political life between rulers and their subjects.

Quite a number of scholars contend that paternalistic governance tends to limit individual autonomy. For example, during the "New Culture Movement" (*xin wenhua yun dong* 新文化運動) popular at the beginning of the last century in China, Chinese intellectuals who advocated Western-inspired notions of individualism vehemently criticized Confucian paternalism as being "oppressive" and "cruel" in the name of parental protection. By contrast, Mencius' critique of the concepts of "each for himself" held by Yang Zhu (楊朱; 440–360 BCE), and his support of the notions of being "without rulers" and "inclusive love" promoted by Mozi (墨子; 476–221 BCE), were taken to lay the grounds for a Confucian position on paternalism punctuated by the idea of "filial piety" towards one's parents and rulers. In the West, we often see a conflict between paternalism and individual autonomy. Gerald Dworkin, for example, defines paternalism as "the interference of a state or an individual with another person, against their will, . . . defended or motivated by a claim that the person interfered with will be better off or protected from harm" (Dworkin 2020). By contrast, Confucian paternalism entails an implicit and more harmonious understanding of checks and balances between individual and society. In Confucianism, the "right" of individual liberty is never absolute and must be weighed against the "good" in service of which the individual interests of everyone are pursued. In other words, in the Confucian view, the right and the good cannot, and should not, so easily be distinguished. Sor-Hoon Tan notes that even if one concedes that there is a tendency toward paternalism in Confucianism, one could still maintain that paternalism could never be pushed too far on Confucian grounds because its preoccupation is with a moral transformation which could not be brought about by force alone (Tan 2010, p. 141). Tan resists identifying Confucian paternalism with authoritarian and totalitarian regimes. Joseph Chan, on the other hand, associates the foundation of Confucian political authority with the concept of perfectionism in which oversight and liberty are fused into a holistic ideal. While realizing that one of the most challenging issues that must be faced today in developing a contemporary Confucian ethical and political theory is the question of individual autonomy, Chan attempts to show that Confucian ethics entails a notion of "autonomy" baked into its foundational premises, defining autonomy as a voluntary and reflective engagement of morality (Chan 2000, p. 282).

It remains a question as to whether political perfectionism itself, in the Confucian or liberal instance, is technically paternalistic. In contrast to state neutrality, perfectionism holds that the state has a duty to take a stand on what is a worthwhile way of life in order to help people flourish. In this sense, "Confucian perfectionism," if we use this term, suggests a form of paternalism since "worthwhile conceptions of the good are what people should be guided by", and a perfectionist state is likely to provide a motivation for a wide range of paternalistic policies (Clarke 2006, pp. 111–12). John Rawls, for example, points out that perfectionism would sanction the oppressive use of state power in order to enforce a conception of the good (Rawls 1993, p. 37). If Rawls is correct in his observation, then how should Confucius' tendency to embrace some form of paternalism be assessed? To answer this question, we need to go beyond the modified definition of paternalism challenged by libertarianism and explore possible connections between state initiatives which appear as beneficial interventions and Chan's and Rawls's notion of autonomy as a voluntary and holistic morality, which assumes a positive use of state power to promote the good.

A model of Confucian paternalistic governance can be understood as a weaving together of three interrelated aspects: (1) character-based consequentialism; (2) the pivotal role of trust in explaining leadership effectiveness; and (3) relationality and reciprocity. Sarah Flavel and Brad Hall develop the term "exemplary paternalism", stating that Confucian paternalism "stresses cultivation of the people by moral exemplars to guide the people to act in ways that are in their own best interests" (Flavel and Hall 2020). They agree with Tan that Confucianism emphasizes the notion of guidance qua exemplars instead of coercion qua punishment (a method employed by the School of Legalism or *Fajia* 法家). In this

respect, Confucian paternalism can be interpreted as a "soft" prod, one which simultaneously accounts for the needs of individual and society. Flavel and Hall argue that Confucian paternalism "does not advocate for a static top-down structure of governance that is incapable of reform, underscoring its non-authoritarian ideal" (Flavel and Hall 2020). This form of paternalism is "weaker" in that, to channel Dworkin, "it is legitimate to interfere with the means that agents choose to achieve their ends, if those means are likely to defeat those ends" (Dworkin 2020). Flavel's and Hall's observation is important and helps us avoid an unjustified authoritarian reading of Confucianism by raising the prior question of whether paternalism necessarily implies a coercive posture that works against the will of the person being interfered with. As the authors conclude: "To define Confucianism as authoritarian would be an unfair judgment on several counts, but especially because Confucian thinkers believe that using coercion and force of law as a primary method of control is an inferior method of overseeing and even directing the behaviors of the people" (Flavel and Hall 2020, p. 224).

We might examine some characteristics of Confucian paternalism that can be invoked to support Flavel and Hall's argument. First, exemplary paternalism denotes an idea of governance by moral exemplars which is facilitated by a merit-based political system. Authority is not given by a transcendent power, nor obtained by force, but is recognized and conferred by a person's character or virtue. In his studies of Confucian ethics, P. J. Ivanhoe coins the term "character consequentialism" (a hybrid of virtue ethics and consequentialism) to describe the virtues promoted by Confucianism that are valuable both intrinsically and instrumentally (Ivanhoe 1991, p. 55). According to Ivanhoe, a virtue-based consequentialism develops a specific sense of authority that is established on the basis of an assessment of concrete moral agents practically reasoning. In this respect, it pays attention to character development. Ivanhoe points out that such a virtue ethic might also go by "character consequentialism" insofar as it differs from a rigid utilitarianism, focusing on the long-term benefits brought to individuals and society as a whole. Writes Ivanhoe, "character consequentialism is concerned with a range of results of actions, especially the effect a given action has on the development of a person's character" (Ivanhoe 1991, p. 61). The development of moral character empowers persons in the right direction, producing "certain desirable consequences" (Ivanhoe 1991, p. 61). Confucian exemplary paternalism represents political influence based on the Confucian ideal of *ren* 仁 (humanness/benevolence), implying the existence of a benevolence which is intrinsic to legitimate authority. At the same time, this model of paternalistic meritocracy has an instrumental value that generates a mutual *xin* 信 (trust or trustworthiness) that is crucial to a functional paternalism. While *ren* points to the Confucian principle of love and respect one harbors towards others, xin helps to establish the affective and functional bond between leaders and their people.

The virtue of interpersonal trust is a second important aspect of Confucian paternalism. In Chinese, the character *xin* is a combination of the root "person" (*ren* 人) with the trait of righteous "speech" (*yan* 言), meaning a person who keeps their word. But the term in Confucianism actually indicates a moral integrity that goes beyond the specific notion of "keeping one's word," extending to a robust connotation of trust secured by psychological mechanisms underlying the relationship between paternalistic leadership and consensual performance among the people. According to Boin and colleagues, there are three factors that determine the credibility of authorities during a crisis: prior trust, the initial response, and the timing of messages (Boin et al. 2021, p. 78). Legitimate authorities should not act unilaterally, bereft of the explicit acknowledgement of those on behalf of whom they are acting. Trust requires a sensitivity both to timing and to how authoritative action is being perceived.

From a Confucian point of view, trust not only refers to the character, or *moral integrity*, of public authorities (officials and experts), but also to faith in their *professional capacities*. These concepts do not neatly fit Western distinctions between "public" and "private". For Confucians, "parent–officials" are not some arbitrary outside agents who interfere in the life of the community. Rather, they provide guidance through their exemplary actions,

where "decisions are made for others (with or without their knowledge) yet perhaps with their full or implicit support" (Flavel and Hall 2020). It follows that successful Confucian paternalism seeks and affirms a political arrangement that is based on the moral trust entailed in a family model. The relationship between a government and its people is not a political contract but a moral bond. The primary purpose of Confucian paternalism is not to coerce others for their own good. Rather, it seeks a shared, reciprocal good for both parties involved.

A third aspect of Confucian paternalism follows from the previous points. Paternalistic Confucianism's commitment to relationality and reciprocity attempts to account for the rich social matrix in which individuals must inevitably exist to fulfill shared and common goals. Relationality recognizes the interconnectedness of society both at the family level and state level. Reciprocity, in turn, implies that the self and the other are deserving of equal and mutual respect. The prioritization of these attributes entails an appreciation of the collective, common good, which is emphasized over the idiosyncratic desires of individuals. Politically, Confucian leaders view themselves as integral to social relationships made up of persons who have moral duties generated through a web of connections and interdependence.

In this respect, relationality in Confucianism points to a concept of a person's self-determination that is different from that of liberal individualism in the West. The Confucian characterization might be expressed as "relational autonomy," a term that has been employed by feminist thinkers in the West to reconceptualize traditionally patriarchal notions of autonomy (Mackenzie and Stoljar 2000; Carter et al. 2015). Individual choice, while important, is always enmeshed in and responsive to the relationships in which one participates. Relationality in this context points to the idea that autonomy requires something in addition to self-sufficiency. The Chinese character *ren* 仁, a combination of the roots for "person" and "two", which denotes interpersonal relationships, emphasizes this augmentation beyond the Western notion of autonomous individualism. As Herbert Fingarette puts it: "for Confucius, unless there are at least two human beings, there are no human beings" (Fingarette 1972, p. 24). Humans are in every instance social and responsible beings. Correspondingly, the concept of self is intimately and intricately enmeshed in human relationships. A person's relational conditions are necessary for shaping who they are. Confucian paternalism focuses on the role of family as the intermediary social arrangement that connects the state and individuals.

3. Reciprocity and Relationality

More needs to be said about the complementary attributes of reciprocity and relationality in order to clarify Confucianism's resistance to dichotomizing "self" and "other", two concepts which, in contrast to Confucianism, are demarcated in both libertarianism and the version of paternalism that libertarians tend to critique. In a Confucian worldview, reciprocity's aim is not calculated self-interest, but shared aims and mutual respect. Like *ren*, reciprocity (*shu* 恕) is considered a crucial virtue that denotes two meanings: (1) mutuality and (2) interaction with sympathetic understanding. Reciprocity thus implies an "analogical extension" *(leitui* 類推), which is a movement from self to others in the sense of being empathetic towards others. It is understood as "consideration of others", "empathy", or even "altruism". In the *Analects,* when a student asks Confucius about the meaning of reciprocity, he replies: "Do not impose on others what you yourself do not want" (*Analects,* 15:24). This statement can be viewed as the converse of the principle of the golden rule often held up as the standard-bearer by scholars in the West. In the Confucian formulation, mutual interaction between self and other often focuses on not doing something. Wing-Tsit Chan and Vincent Shen also translate *shu* as "reciprocity," a direct form of perspective-taking. As Chan notes, "putting oneself in another's place is an act of compassion and moral practice of concern for the welfare of others" (Chan 1963, p. 44). Both see reciprocity as tantamount to the pursuit of the "common good" (Shen 2008, pp. 291–304). If we ap-

ply this understanding of reciprocity to Confucian paternalism, we see that the notion of coercion through threats cannot be rendered morally acceptable or even coherent.

Given the way in which reciprocity has just been spelled out, we can see that it is inherently relational, which is to say never exclusively self-regarding. If one wishes to explore what the traditional Confucian ethic of reciprocity and relationality might look like in a Western context, contemporary discussions of relational autonomy developed in modern feminist literature give us one path forward. In her book *Tough Choices: Structured Paternalism and the Landscape of Choice*, Sigal Ben-Porath offers a concretized justification for paternalism, noting that it is "an attempt to improve the well-being of others while keeping in mind their inferred needs, including the threshold conditions of civic equality and the expansion of opportunity" (Ben-Porath 2010, p. 20). For Ben-Porath, the term "inferred needs" alludes to the things that are necessary to sustain life, such as water, food, shelter, and health. The phrase "threshold conditions of civic equality" pertains to the function and availability of governmental institutions, including access to quality education, healthcare, and transparency in voting rights. This version of state paternalism reflects the classical, Western liberal aspiration of protecting the vulnerable individual who stands to be exploited, while casting communitarian ambitions as the means to this end. Thus, it attempts to balance individual liberties with the pursuit of collective goals. In making this move, the author offers a middle way between the choices of freedom-oriented anti-interventionism and equality-oriented social welfare.

Ben-Porath's modified paternalism is related to but importantly different from that of Confucius's. Confucius harbored a tendency to divide (or "sort") people into various categories in terms of different social roles, leading to an ethos of "to each according to their own needs" as opposed to the practice of loving everyone equally. In this respect Confucian paternalism is sensitive to different roles people occupy in society. Individuals situated in complex webs of familial and community relationships are understood to experience different and competing responsibilities. One might have a role simultaneously as a parent caring for one's children during a pandemic and a competing role as a governmental official tasked with the care of citizens during the same health crisis. The dilemma is how one should balance these different roles, their related responsibilities, and competing claims. How should public responsibilities be curtailed when they stand in tension with familial duties? Such adjudication is dependent on specific situations and contextual determinations, not fixed ethical rules or guidelines. Although the script determining defined roles, obligations, and norms of behavior in modern society is not as clear as it might have been in Confucius' time, the Confucian role-based ethic, if it is to be commended to modern settings, should be grounded in our empirical experience in life.

The "middle way" offered by Ben-Porath and other Confucian revisionists is worthy of serious consideration. Many today are concerned about the potential danger and overreach of a paternalistic state. Thoroughgoing, or "hard," paternalism tends to interfere pervasively in people's lives, violating the prerogative for self-regarding choice, while soft paternalism tends to interfere in specific situations when governmental prerogatives are asserted. The distinction between "hard" and "soft" can also be made in terms of the way interference is performed. Traditional Confucian ethics assumes that people live in largely role-defined relationships and in communities in which they share with everyone else common virtues and norms, language, goals, and ritual practices (*li* 禮). Indeed, the priority given in Confucianism to such ritual practices is the primary means of legitimizing power, cultivating self-virtues, and creating a communal order. As such, Confucianism speaks more of "rites" than "rights." The former gives priority to a person's duty to others (Zhang 2010, p. 260). This moral ordering is perhaps counterintuitive in a setting of contemporary urban communities in which people imagine themselves as independent entities, seeing themselves more as "moral strangers" rather than "moral friends" to others.

It should be noted that Confucius would have been sympathetic with some of the libertarian concerns about concentrated power given the Confucian critique of state coercion via legal enforcement of actions advocated by the School of Legalism, where paternalism

is typically characterized by coercive power in contrast to the influence of the morally exemplary. Nevertheless, Confucius would not have absolutized individual autonomy and freedom, since solutions to many crises depend on cooperation and, by extension, some measure of subjugation of immediate individual interest. With appropriate implementation of government rules and policy, people could be better off or less harmed, but state involvement should never be considered synonymous with state coercion. Such an understanding of paternalism implies a form of epistemic privilege where it is legitimate for a morally and intellectually cultivated elite to take a leading role in engineering social policies for the human good. Thomas Metzger utilizes the term "epistemic optimism" to refer to the idea that in traditional Chinese society, people expect cultivated and professional rulers to deliberate about the most effective means for promoting social goods on behalf of those they are charged with representing (Metzger 2005, pp. 21–31). Knowledge is power, but it is also something which is earned and used for the benefit of those who are not knowledgeable.

This consideration leads to a final point about the relationship between individuals and governmental officials. "Relational autonomy" of the sort Confucius commends presumes a relationship between people and governmental officials. In this relationship, the key issue is trust, which, in the context of COVID-19, amounts to trust in authorities *qua* public health specialists and policymakers. Distrust toward authorities can be dangerous, particularly when people are limited in their access to information concerning pandemic control and limited in their disposable time to inspect such information. Frequently in life, we will have no choice, as a practical matter, but to rely on officials publicly and professionally assigned to promoting our best interests, including our health interests. This will be an easier thing to accept if there are well-established grounds for trust prior to these pivotal moments. That a population would come to rely on its designated public health officials, legitimately and over time, is a reinforcing, a buttressing, of autonomy, since such officials enable the common people to live life safely and cooperatively.

4. State Interventions during COVID-19 and the Benefits of Confucian Paternalism

The COVID-19 pandemic forced a reassessment in many places around the world of the feasibility of a rigid commitment to non-governmental interference, including revisiting policies surrounding mandatory vaccination, health passport requirements, citywide lockdowns, isolation and quarantine, and border controls. Immediately following the onset of the COVID-19 pandemic, state interventions were implemented in order to mitigate the spread of the virus and lower the death toll. These measures took the form of social distancing, mask-wearing, regional commercial and travel shutdown, sporadic isolation or quarantine, and mandatory vaccinations. In response to declared emergencies selectively incorporating these strategies, hospitals in mainland China shifted from patient-centered to population-centered healthcare provisions, predictably causing some problems for patients with chronic diseases that required medical treatment and individual oversight on a regular basis. The situation became more acute and certainly more controversial when definitions of "non-essential" and "non-urgent" service became less clearly defined to the public. This all took place amidst a debate over the feasibility of the newly adopted heavily utilitarian approach to public policies that prioritized population health needs during the pandemic over the individual "few" who stood to suffer more because of decreased targeted care and personal attention.

In spite of these tradeoffs, most Chinese citizens were nevertheless not shy to acknowledge how effective paternalism could be in response to crisis management. COVID-19 provides a distinctive and helpful test case for the line-drawing between justified and unjustified aspects of paternalism and for distinguishing among different conceptions of autonomy. Indeed, individual autonomy becomes a tricky issue when public health is suddenly placed in jeopardy. The response to government containment strategies during the initial stages of the COVID-19 pandemic was recently compared in a study of four northern European countries, Denmark, Germany, the Netherlands, and Sweden. It revealed that all four

placed emphasis on expressions of governmental trust in the development of their policy responses (Perlstein and Verboord 2021, pp. 1–23). In the case of Sweden, a laissez-faire attitude once deemed acceptable by a majority was questioned as mortality rates from the pandemic began to rise. A comparable situation was seen in Hong Kong, where the idea of limited government initially had been accepted by most of Hong Kong's citizens. With the onset of the pandemic, the government of Hong Kong initiated a series of policies to control the spread of virus, such as lockdowns, restrictions on visits to hospitals and nursing homes, and the implementation of vaccination passports. Because of the vivid and painful memory of SARS in 2003, most people in Hong Kong agreed to various compromises that took the form of acquiescing to government regulations at the expense of their personal freedoms. In the summer of 2022, Hong Kong's government informed members of the public that the third stage of the Vaccine Pass was to commence on May 31. By then all members of the public aged 12 or above, except those who obtained the COVID-19 Vaccination Medical Exemption Certificate, were required to receive COVID-19 vaccination(s) to comply with government requirements.

Concurrent with these developments, the Cato Institute, a libertarian thinktank in the US, published numerous articles debating whether "state capacity" should be boosted to respond to havoc wrought by the pandemic. Thomas A. Firey wonders whether "Americans must accept much greater governmental intervention in their lives if the United States were to respond effectively to the disease," given that, practically speaking "there are no libertarians in a pandemic" (Firey 2020). While criticizing the US government's uncoordinated and incomplete efforts to control the pandemic at the federal, state and local levels, Firey contends that governments across the board could do a better job at effective intervention. Though he does not fully agree with the idea that limited government has handicapped the country's response to the crisis, he does accept the necessity of competent state intervention in the face of such a health crisis.

The debate about state intervention in the face of competing moral claims to respect autonomy highlights the appeal of the concept of the "nudge" used by Richard Thaler and Cass Sunstein in support of "libertarian paternalism." The authors develop the concept of "choice architecture," designed as a mechanism for the state to encourage modification of behavior in desired and predictable ways without overriding individual autonomy or rejecting freedom of choice. Structurally, nudge theory rules out forcing individuals to succumb to top-down regulation, as it discourages introducing economic incentives to compel governmentally mandated action. The argument rests on the belief that paternalism can encompass a certain flexibility with regard to interference. Though an oxymoron, Thaler and Sunstein deploy the phrase "libertarian paternalism" to reveal a false assumption and at least two misconceptions associated with competing notions of paternalism. The false assumption is that people usually make choices that are in their best interest, while the two misconceptions are that there are more obviously viable alternatives to paternalism and that paternalism itself always involves coercion (Thaler and Sunstein 2008). In lieu of the forced dichotomy between libertarianism and paternalism favored by some, Thaler and Sunstein hold that the libertarian paternalist approach preserves individual choice while simultaneously authorizing both private and public institutions to "steer" people by means of incentives, persuasion, education, and thought experiments intended to promote their wellbeing. "A policy counts as 'paternalistic' if it is selected with the goal of influencing the choices of affected parties in a way that will make those parties better off" (Thaler and Sunstein 2008). Other scholars similarly embrace presumptive libertarian assumptions in justifying paternalistic interventions, focusing in their approach on the failures of rational decision-making. Sarah Conly, for example, rejects the idea of autonomy as absolute or inviolable, clarifying that people are often irrational in their decision-making (Conly 2013). Because their judgments are often compromised and their choices frequently undercut the achievement of their own goals, Conly argues, we should accept some degree of governmental influence *in service* to a principle of respect for persons. In this understanding, paternalism is what establishes the ground for the enabling conditions of agency.

This view of limited, or moderate, paternalism applies similarly to the holistic Confucian conception. In Confucianism, as with the examples just considered, freedom of choice is built into the notion of moral responsibility. Chenyang Li observes that while in the West there is often a distinction posed between personal autonomy and moral action, there is an integration of these two forms of autonomy in Confucianism, with the combination including self-activation, self-cultivation, self-reflection, and self-reliance. As Li puts it, "From a Confucian perspective, personal autonomy always, more or less, carries with it a moral characteristic because of the inevitable effect our action imposes on people around us." (Li 2014, p. 906). Regarding freedom of choice, Confucius did not focus on the act of choosing per se, but the object or outcome of choice.

Li's observation reminds us of the problem we often encounter in biomedical ethics when debating the legitimacy of informed consent, according to which the attributes of voluntariness, disclosure, understanding and capacity all need to be present in order to know that consent has genuinely been offered and rendered. Among these four characteristics, voluntariness and capacity are particularly problematic, as both principles suggest the idea of an overt individual responsibility of shared decision-making, while in reality a patient often signs informed consent papers as an "act" of freedom without real understanding of what they are giving consent to. There are many reasons this might be so, including limited capacity, subject difficulty, and poor presentation. Confucian paternalism, rather than putting an unrealistic pressure on individual patients to guarantee moral compliance with their own commitments, is built on the trust of medical professionals as well as the supporting presence of family members. A patient is empowered to make a final decision with guidance from the doctor, but a prior and vetted acquiescence to medical authorities who have earned the trust of their patients also serves as a safeguard to rubberstamping which serves no one. In this respect, Confucian paternalism promotes rather than undermines autonomy.

These issues are worth exploring in the context of policies governing mandatory vaccination in countries requiring balancing public health priorities with individual liberty concerns. Even if arguments grounded in the collectivist language are eschewed, we can still defend some mandatory policies by other valid arguments in the exigent instance in which a pandemic presents a tangible risk to society. Jason Brennan contends that mandatory, government-enforced vaccination can be justified even within a libertarian political framework. He advances what he refers to as a "clean hands principle", which is a legal term that calls out the potential hypocrisy of those who uncritically call for a universally "hands-off" disposition (Brennan 2018). As Brennan notes, "hands off" is not so harmless and can lead to worsening the condition of society's most vulnerable individuals. In his prescription, those seeking equity must do equity," and "equity must come with clean hands". In other words, only a party that has done nothing wrong, including not failing to do something that might hurt another, can come to court with a lawsuit against the other person. Brennan appropriates this term to show that the potential harm to others brought by the unvaccinated violates the principle of non-aggression maintained by libertarians. After all, the core libertarian value of freedom does not just include political autonomy but also one's right to life. According even to Nozick, freedom is defined as the prevention of, and protection against, aggression by others, and protection of one's life (Nozick 1974). Based on Nozick's own assumptions, Brennan asserts: "Individuals may be forced to accept certain vaccines not because they have an enforceable duty to serve the common, and not because cost–benefit analysis recommends it, but because anti-vaxxers are wrongfully imposing undue harm upon others," thereby violating the clean hands principle (Brennan 2018, p. 37).

Apart from the "clean hands principle", Mill's "harm principle" can also be interpreted to establish that the right to free choice or self-determination is not unlimited. According to Mill, an action that results in doing harm to another is not only wrong, but also *wrong enough* that government must intervene to prevent that harm from occurring. In spite of the fact that Mill's harm principle was not designed primarily to guide the actions

of individuals, its use even in the political and public health arena inevitably places restrictions on personal liberty and an individual's right to exercise free choice. This position is consistent with the Confucian view elaborated earlier that asserts that what matters is not simply the act of choice but its consequence.

This is not to say that in the Confucian account there will never be legitimate medical justifications for refusing a vaccination which we might wish to respect. As Fan notes, "Confucianism would certainly permit medical exemptions for medically difficult individuals, such as those who are immunocompromised, allergic to the components used in the vaccinations, suffering from relevant diseases, or standing other medical contraindications to vaccination" (Fan 2018, p. 27). This flexibility in vaccine restriction and response is closely associated with the Confucian idea of "appropriateness" (*yi* 義), which connotes a moral discernment that allows situational consideration. The overall point is that Confucianism allows for give and take, and for flexibility with regard to the manner in which benevolent governmental influence is imposed, even when such is deemed necessary.

5. Confucian Paternalism in the Light of the WHO's *Ethical Guidance*

The World Health Organization (WHO), in its "Guidance for Managing Ethical Issues in Infectious Disease Outbreaks," identifies the consideration of seven ethical principles for public health during epidemics: justice, benevolence, utility, respect for persons, liberty, reciprocity, and solidarity (WHO 2016). This guidance grew out of ethical concerns raised by the Ebola outbreak in West Africa in 2014–2016. These principles are perceived as cross-culturally shared despite political, religious, or cultural inflections; however, it should be noted that some derivative rules such as privacy, confidentiality, truth-telling, and informed consent provide more specific guides to action than do the more general principles identified in standard accounts of biomedical ethics (Beauchamp and Childress 2001, p. 14). This means, among other things, that despite universality, there is room for flexibility of interpretation and sensitivity to particular cultures in which universal norms are being applied.

Such an acknowledgement is one viable way of approaching the debate over the question of how specific cultures might go about integrating supposedly universalizable ethical principles. Universals exist in moral reasoning, and they can even serve as a basis for a global biomedical ethics regimen, but they must always be interpreted within specific linguistic and cultural settings. Many Chinese ethicists grapple with how best to reconcile ethical universalism with modern Chinese culture. Principles such as benevolence are relatively non-controversial, since most Confucian scholars agree that they are implied by the Confucian virtue of *ren*, i.e., doing good and not doing harm. The virtue of *ren* can be expressed both positively and negatively. The positive formulation of *ren* is "Wishing to establish one's own character, seeks also to establish others; wishing to be prominent oneself, also helps other to be prominent" (*Analects* 6:30). The negative formulation, "Not to do to others what you do not want them to do to you," denotes the notion of non-maleficence and noncoercion (*Analects* 15:23). It carries an explicit intent to prevent "moral harm" (Allinson 1985, pp. 305–15). The idea at work here is that both action and inaction have other-regarding consequences, something not adequately captured in an ethos of straightforward rule-following.

With regard to two other principles, respect for persons and justice, reconciliation with the Confucian worldview is perhaps more challenging. From a Confucian perspective, personal autonomy and freedom must be taken into consideration within a framework of the public good and prior to individualistic considerations, especially during the advent of a public health crisis. Because Confucian ethics is grounded in the notion of "relational persons," it is likely to be relatively accepting of pandemic responses that begin from the premise that human beings are social and consequently more amenable to mitigation measures which restrict personal liberty (including isolation, quarantine, travel advisories or restrictions and community-based measures to reduce contact between people, such as closing schools or prohibiting large gatherings) (WHO 2016). Because it is filial-focused

rather than individualistic, Confucian ethics can accommodate paternalistic restrictions, so long as the proposed interference with individual liberty is understood as "family co-decision." For example, in the case of vaccination, parents' views on whether their children should get vaccinated or not need to be heard. No one has sole or unrestricted dominion over their choices, because those choices almost always affect more than oneself. Fan recommends that Chinese healthcare be guided by the Confucian ethical principles of *ren-yi* 仁義 (humaneness–appropriateness) and *chengxin* 誠信 (sincerity–trustworthiness), virtues that recognize interconnectedness at the outset of all moral decision-making.

In the case of disputes regarding vaccination mandates, Confucian principles may help us to reflect on the limits of over-emphasizing individual autonomy at the expense of consideration of one's moral responsibility to others. The principle of *humaneness–appropriateness* denotes the idea of "doing good", while the principle of *sincerity–trustworthiness* provides guidance for how to think about and encourage the legitimacy of political authorities, particularly given its emphasis on reducing or avoiding the mistrust that can be caused by various forms of government-backed public health measures during a health crisis. As we have seen over the past three years, a society's compliance with government restrictions, or the rejection of these interventions because of developing distrust, can make or break containment efforts. At the same time, the libertarian warning against excessive government intervention signals the risks of powerful governments asserting their control and insinuating themselves excessively into the lives of their citizens through policies such as lockdowns, mandated health passes, contact-tracing using mobile apps, and the use of related technologies, quarantines, testing, and screening.

One sense of justice emerges as another sense is contested. According to the WHO, justice, or fairness, encompasses two related concepts: substantive *equity* and *procedural justice* (WHO 2016). Equity focuses on fairness in the distribution of scarce medical resources, scarce opportunities, and undesirable burdens. Procedural justice seeks to establish a fair process for making important decisions. All social systems entail mechanisms for distributing scarce resources in health care settings by evaluating the fairness of the procedures involved. Determining who receives what, when, and how, often amounts to detailed kinds of decision-making. Should we distribute on the base of first-come-first-served, priority of one in need, a person's ability to pay, or the best overall outcome (straightforward utility)?

Confucians may have different viewpoints on what the best mechanisms are to put in place in order to guarantee just procedures for the distribution of scarce resources. For instance, should the earliest vaccines be given to the individuals who will benefit the most, or to individuals who will protect their communities the best? Instead of responding with an insensitive or imprecise notion of "equality" (e.g., give it out based on lottery or to whomever presents first at the hospital), Confucian paternalists tend to favor giving priority to seniors who are more vulnerable to the virus. At the same time, the pressure of mandatory vaccination during the second and third years of the COVID-19 epidemic was placed on the society in general but not heavily pushed on the elderly in China. As the COVID-19 pandemic unfolded, discussions took place in the professional medical, religious, and philosophical literature, not about autonomy with regard to taking the vaccine, but about access in the form of its availability, particularly in urban versus rural populations, where vaccine hesitancy varied (Wu et al. 2023, pp. 1–12). Confucians tend to agree with the WHO's position that some groups face heightened susceptibility to harm during the pandemic and thus special consideration should be given to address their needs.

The WHO's document adds three more principles which inform moral deliberations concerning crises caused by the outbreak of pandemics: utility, reciprocity, and solidarity. The principle of utility suggests that actions are right insofar as they maximize the wellbeing of individuals or communities. Efforts to maximize utility require consideration of proportionality (balancing the potential benefits of an activity against any risks of harm) and efficiency (achieving the greatest benefits at the lowest possible cost). This noted, when government officials choose to embrace the utilitarian course, according to Confucians ethics, they should have a clear understanding of what "wellbeing" actually means in the concrete,

taking into account other relevant values and keeping in mind compromises that might be needed to realize these goals. Confucian ethics does not completely reject the optimality principle, but many Confucians would argue that the pursuit of short-term effectiveness should not replace the primacy of duties and virtues. Sacrificing the need of individual "few" has the potential to stand in tension with benevolence (and non-malevolence). Thus, for example, a multipronged approach is better when mandatory quarantine or citywide lockdown has to be implemented in an urgent situation, such as providing special service to the sick and the elderly instead of treating everyone "the same." At the same time, Confucians advocate the "doctrine of the mean" (*zhongyong* 中庸), maintaining that "to go beyond is as wrong as to fall short' (*guoyou bu ji* 過猶不及) [*Analects* 11:15]. The doctrine of the mean in Confucianism acknowledges how important, yet difficult, it is to take a timely action or reaction in every critical moment of decision-making. It aims at harmonizing the interest of individuals and the wellbeing of society.

The principle of reciprocity, likewise, implies that one has a moral obligation to offer a "fitting and proportional response" to the actions and contributions that another has made and from which one has benefitted. This suggests an appreciation for the role of mutual understanding in a relationship that leads to the presence of trustworthiness at both organizational and interpersonal levels. In terms of the distribution of scarce resources, reciprocity entails an obligation to ensure that healthcare workers who accept risks of exposure to infectious disease when providing care to patients have access to essential goods, such as personal protective equipment. This might mean giving priority to health care workers for scarce resources, such as intensive care beds or ventilators.

The first two principles are not in conflict within Confucian ethics, since the philosophy conceives of people fundamentally as members of social groups, including family, clan, political community, and state. With regard to the third principle, social solidarity, questions about inclusion need to be addressed. Who is the "we" a government is meant to represent, and which demographic is emphasized within this collective? Confucians emphasize the importance of helping aging generations cope with increased risk experienced during health crises. To care for the elderly is part of "filial obligation," a pivotal duty in the Confucian tradition. In Hong Kong, for example, specific regulations were established to make sure that older people had access to information, care, and medical services through familial connections and community services (Au 2022, pp. 9–25). Currently in Hong Kong, more than 90 percent of the elderly live in domestic households. (The remaining live in non-domestic households, such as residential nursing homes, hospitals, and penal institutions). Since the sense of isolation caused by social distancing measures has dramatically impacted those living alone, any support that comes from family and community (e.g., daily activities through video links and other digital means of synchronous communication) improves their welfare. Social media in Hong Kong has created a special platform where people can exchange ideas about effective ways of taking care of the elderly during the medical crisis. The principle of solidarity ensures that sub-populations within the larger population will appropriately be accounted for, just as it requires populations themselves to be regarded as their own worthwhile whole.

Paternalism in a Confucian context, then, implies moral judgment as well as detailed and nuanced estimations of what is good for the part and the whole. It will be sensitive and calibrated if, in its application, it successfully addresses the needs of the vulnerable. Only in this way can paternalism be purged of its negative connotation and build into its moral analysis the specific needs of different groups. By the same token, individualism need not be posed as the opposite of collective action. Confucianism is its own virtue ethic that has the power and flexibility to respond to the needs of human beings as they are individually revealed on a case-by-case basis by attending to collective actions that respond to health crises. Confucian paternalism can be sensitive to the needs of struggling individuals while also accommodating overarching obligations to protect the welfare and wellbeing of the larger population.

6. Conclusion

The argument of this paper has been that a soft Confucian paternalism offers an alternative way of thinking about human relationships and moral obligations during challenging times and that it serves as a way to avoid adopting policy positions that may be formulated in too individualistic a manner and with little room for the proper consideration of other dimensions of respect for persons. It eschews a position where individual autonomy is given veto power over all forms of intervention. Many national governments during the COVID-19 pandemic were called upon to introduce policies designed to contain the spread of COVID-19 which would benefit everyone in the long run. Although "relational autonomy" does not resolve every existing tension between individual freedom and public safety, solidarity and collective action proved to be relevant to the creation of sound public health policy during a time in which we confronted a transboundary crisis wrought by a virus which knows no borders.

Ideally, the aims of public health are best fulfilled when citizens voluntarily follow preventive measures without recourse to government coercion. We all wish to arrive at a point where caregivers, patients, the public, and government can arrive at a shared idea of the common good, mutually assenting to the instantiation of the good in policies which reflect compassionate care. If our moral discourse focuses on the values of trust and relationality, and we hold our leaders to aspiring to expertise and professionalism, we will move in a direction that will provide desired health outcomes. Confucian virtues, including the emphasis on family values where paternalism comes to entail individual ends, can be implemented as a needed hybrid entity effective in softening the tension between the individual and society in the management of the COVID-19 pandemic situation.

Likewise, a Confucian ethic based on familial relations and a notion of authority premised on shared decision-making can enhance a productive sense of paternalistic behaviors for all strata of society, particularly in an emergent health emergency where we hope to save as many lives as possible. Although the notions of "filial piety" and "parent–officials" in Confucian thought are sometimes perceived as authoritarian, the Confucian normative imperatives do place the needs and welfare of the people and the common good of the society at the center of deliberative policy-making. These Confucian values, translated into the ethical guidelines and practical policies of public health, encourage a degree of state intervention when high stakes decisions are involved.

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